

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

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Attorneys for Plaintiffs

DR. FADI CHaabAN, DR. SABINO R.
TORRE, DR. CONSTANTINOS A.
COSTEAS, AND DR. ANTHONY J.
CASELLA as Trustees of Diagnostic &
Clinical Cardiology, P.A. Profit Sharing Plan,

Plaintiffs,

v.

DR. MARIO A. CRISCITO,

Defendant.

Case No. 2:08-cv-01567 (GEB/MCA)

**DECLARATION OF
ANTHONY J. CASELLA IN
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

I, Anthony J. Casella, being of full age, hereby declare as follows:

1. I have read "Defendant's Statement of Undisputed Material Facts, Pursuant to L. Civ. R. 56.1(a)", the "Declaration of Robert J. Conroy in Support of Motion for Summary Judgment Pursuant to Fed. R. Civ. P. 56" and "Defendant's Brief in Support of Motion for Summary Judgment, Pursuant to Fed. R. Civ. P. 56".

2. I am submitting this declaration in opposition to Defendant, Dr. Mario Criscito's ("Criscito") Motion for Summary Judgment.

3. The statements set forth in Paragraphs 10 and 11 of Defendant's Rule 56.1 Statement are accurate. However, my responsibility for handling the day to day financial aspects of Diagnostic & Clinical Cardiology, P.A.'s ("DCC") medical practice was dramatically reduced when new officers of DCC were elected in 2006.

4. I reported DCC employee salary and demographic information to APC from approximately 1993 to 2007. In 2007, Mark Brown, DCC's Administrator assumed responsibility for reporting DCC employee salary and demographic information to APC. The reporting of employee salary and demographic information was my only involvement with APC (other than with respect to my individual account) until Criscito was removed as sole Trustee in July 2007.

5. Annexed hereto as Exhibit 1 is a true and accurate copy of the September 30, 2010 monthly statement for the Smith Barney account showing an account value of \$771,846.06.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 4, 2010.



ANTHONY J. CASELLA

EXHIBIT 1

Ref: 00025391 0017053

**MorganStanley
SmithBarney**

Client Statement
July 1 - September 30, 2010

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*I#0000025391 310273AB01 WSC00064A***DIAGNOSTIC AND CLINICAL****CARDIOLOGY PA MPPP #1176****375 MOUNT PLEASANT AVENUE****WEST ORANGE NJ 07052-2724****6TH FLOOR****AVENTURA FL 33180****305.938.6950****Email: alan.d.varkin@mssb.com****Website: www.smithbarney.com**

Account number 416-30833-16 707

Morgan Stanley Smith Barney LLC Member SIPC.*Your Financial Advisor*

Alan Varkin/ Hank Boyce

2007 BISCAYNE BLVD

6TH FLOOR

AVENTURA FL 33180

305.938.6950

Email: alan.d.varkin@mssb.com

Website: www.smithbarney.com

Account carried by Citigroup Global Markets Inc. Member SIPC.

Account value	Last period	This period	%	Cash, money fund, bank deposits	This period
Money fund	\$ 2,671.42	\$ 2,674.24	.35	\$ 649,585.96	
Bank Deposit Program principal	846,914.54	846,962.81	83.82		2.82
Common stocks & options	112,064.58	122,209.01	15.83	Bank Deposit Program interest reinvested	48.27
Total value	\$ 761,630.54	\$ 771,846.06	100.00		\$ 649,637.08

A free credit balance in any securities account may be paid to you on demand.
Although properly accounted for, these funds may be used for business purposes.

Earnings summary

	This period	This year
Money fund earnings	\$ 2.82	\$ 3.67
Bank Deposit Program	48.27	82.14
Total	\$ 51.09	\$ 85.81

Portfolio summary

	This period	This year
Beginning total value (excl. accr. int.)	\$ 761,630.54	\$ 819,150.59
Net security deposits/withdrawals	0.00	0.00
Net cash deposits/withdrawals	0.00	0.00
Beginning value net of deposits/withdrawals	\$ 761,630.54	\$ 819,150.59
Total value as of 9/30/2010 (excl. accr. int.)	\$ 771,846.06	\$ 771,846.06
Change in value	\$ 10,215.52	\$ 47,304.53

Gain/loss summary

	This period	This year
Realized gain or (loss)	\$ 0.00	\$ 138,915.00 LT
Unrealized gain or (loss) to date	(24,031.46)	\$ 0.00 ST

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DIAGNOSTIC AND CLINICAL

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PORTFOLIO DETAILS

Your holdings are valued using the most current prices available to Citigroup Global Markets Inc. (CGMI). In most cases, these values are as of 09/30/10, but in some cases CGMI's sources are unable to provide timely information. To see the date of the most recent price update, please view your account online at www.smithbarney.com.

Securities purchased or sold are included or excluded in this section as of the trade-date. This section may include securities that have not settled as of this statement closing date. Please see the "Unsettled Purchases/Sales" section for more information. Dividend yield is the estimated annual income, assuming the current dividend, divided by the security's market price at the end of the statement period. We do not guarantee the accuracy of the prices reflected on the statement nor do these prices represent levels at which securities can be bought or sold.

Please Note: unrealized gain/(loss) is being shown for informational purposes only and should not be used for tax preparation without the assistance of your tax advisor.

Money fund

An investment in a money market fund is neither insured nor guaranteed by the FDIC or any other government agency. Although money market funds seek to preserve the value of your investment at \$1.00 per share, there can be no assurance that will occur and it is possible to lose money should the fund value per share fall. Moreover, in some circumstances money market funds may be forced to cease operations when the value of a fund drops below \$1.00 per share. In that event, the fund's holdings would be liquidated and distributed to the fund's shareholders. This liquidation process could take up to one month or more. During that time, these funds would not be available to you to support purchases, withdrawals, and if applicable, check writing or ATM debits from your account.

Number of shares	Description	Current Value	Accrued dividends	Annualized % dividend yield	Anticipated Income (annualized)
2,674.24	WESTERN ASSET MONEY MARKET FUND CLASS A	\$ 2,674.24		.06%	\$ 1.60
	Total money fund				

Bank Deposit Program

The Federal Deposit Insurance Corporation (FDIC) provides insurance on deposits up to \$250,000 per account owner, per bank. However, the Smith Barney Bank Deposit Program (BDP) applies certain limits to the maximum deposit amount permitted in certain banks, which may be below the maximum FDIC insurance limits for certain types of accounts. In those instances where an account type exceeds the maximum FDIC insurance limits, those deposits will be uninsured. Balances maintained in Deposit Accounts at each Affiliated Program Bank are not protected by the Securities Investor Protection Corporation ("SIPC") or any excess-SIPC coverage provided by Citigroup Global Markets Inc. For complete details please refer to the "Bank Deposit Program Disclosure Statement."

Principal	Description	Current value	Accrued interest	Annualized % return	Anticipated income (annualized)
149,950.71	CITIBANK NA BANK DEPOSIT PROGRAM	\$ 149,950.71		.03%	\$ 44.98
248,508.05	CITICORP TRUST BANK, FSB	\$ 248,508.05		.03%	\$ 74.55

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EARNINGS DETAILS

The tax status of earnings is reliable to the best of our knowledge. Taxable and non-taxable designations refer to the federal income tax status of your securities, not of your account.

Money fund earnings
Date

Date	Description	Comment	Taxable	Non-taxable	Amount
07/30/10	WESTERN ASSET MONEY MARKET FUND CLASS A	REINVESTED FOR PERIOD 07/01/10-08/01/10 32 DAYS AVERAGE YIELD 1.06 %.	\$ 2.37		\$ 2.37
08/31/10	WESTERN ASSET MONEY MARKET FUND CLASS A	REINVESTED FOR PERIOD 08/02/10-08/31/10 30 DAYS AVERAGE YIELD .20 %.	.40		.40
09/30/10	WESTERN ASSET MONEY MARKET FUND CLASS A	REINVESTED FOR PERIOD 09/01/10-09/30/10 30 DAYS AVERAGE YIELD .06 %.	.05		.05
			\$ 2.82	\$ 0.00	\$ 2.82

Total earnings from money fund**Bank Deposit Program interest**

This section contains interest credited to your account. Accrued interest is not included. See Portfolio details section for accrued interest information.

Date	Description	Comment	Taxable	Non-taxable	Amount
07/30/10	CITIBANK NA BANK DEPOSIT PROGRAM	REINVESTED FOR PERIOD 07/01/10-08/01/10 INTEREST RATE AS OF THE STATEMENT END DATE .03 %.	* 3.89		\$ 3.89
07/30/10	CITIBANK NA SOUTH DAKOTA BANK DEPOSIT PROGRAM	REINVESTED FOR PERIOD 07/01/10-08/01/10 INTEREST RATE AS OF THE STATEMENT END DATE .03 %.	6.48		6.48
07/30/10	CITICORP TRUST BANK, FSB	REINVESTED FOR PERIOD 07/01/10-08/01/10 INTEREST RATE AS OF THE STATEMENT END DATE .03 %.	6.46		6.46
08/31/10	CITIBANK NA BANK DEPOSIT PROGRAM	REINVESTED FOR PERIOD 08/02/10-08/31/10 INTEREST RATE AS OF THE STATEMENT END DATE .03 %.	3.64		3.64
08/31/10	CITIBANK NA SOUTH DAKOTA BANK DEPOSIT PROGRAM	REINVESTED FOR PERIOD 08/02/10-08/31/10 INTEREST RATE AS OF THE STATEMENT END DATE .03 %.	6.04		6.04
08/31/10	CITICORP TRUST BANK, FSB	REINVESTED FOR PERIOD 08/02/10-08/31/10 INTEREST RATE AS OF THE STATEMENT END DATE .03 %.	6.04		6.04

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Bank Deposit Program™ Interest *continued*

This section contains interest credited to your account. Accrued interest is not included. See Portfolio details section for accrued interest information.

Date	Description	Comment	Taxable	Non-taxable	Amount
09/30/10	CITIBANK NA BANK DEPOSIT PROGRAM	REINVESTED FOR PERIOD 09/01/10-09/30/10 INTEREST RATE AS OF THE STATEMENT END DATE .03%.	\$ 3.94		\$ 3.64
09/30/10	CITICORP TRUST BANK, FSB	REINVESTED FOR PERIOD 09/01/10-09/30/10 INTEREST RATE AS OF THE STATEMENT END DATE .03%.	6.05		6.05

Total Bank Deposit Program interest earned

\$ 48.27

\$ 48.27

GAIN/LOSS DETAILS

Please note, this material is being prepared for informational purposes only and should not be used for tax preparation without the assistance of your tax advisor. Absent specific instructions from you, trades are allocated using the FIFO (first-in-first-out) method. Day traders should therefore not rely on this section for day trading results. Your reinvestment activity has been summarized. Single lines have been designated to distinguish Short-term (ST) or Long-term (LT) information. Detailed information will be available at year-end in your 1099 Year-end summary.

Realized gain or loss

Description	Original trade date	Closing trade date	Quantity	Purchase price	Sale price	Cost basis	Proceeds	Realized gain or (loss)
SYMANTEC CORP CGMI AND/OR ITS AFFILIATES FIGURED TO SID 04-15-10	01/14/99	04/12/10	10,000	\$ 13.514	\$ 17.153	\$ 135,142.94	\$ 171,022.10	\$ 35,879.16 LT
TRADE AS OF 04/12/10								
SYMANTEC CORP CGMI AND/OR ITS AFFILIATES	01/14/99	04/22/10	8,000	13.514	17.21	108,114.35	137,271.67	29,157.32 LT
SYMANTEC CORP CGMI AND/OR ITS AFFILIATES	01/14/99	04/22/10	2,000	13.514	17.20	27,028.59	34,299.41	7,270.82 LT
SYMANTEC CORP CGMI AND/OR ITS AFFILIATES	01/14/99	04/23/10	10,000	13.514	17.35	135,142.94	172,991.06	37,848.12 LT

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Realized gain or loss *continued*

Description	Original trade date	Closing trade date	Quantity	Purchase price	Sale price	Cost basis	Proceeds	Realized gain or (loss)
SYMANTEC CORP CGMI AND/OR ITS AFFILIATES	01/14/99	04/28/10	7,500	\$ 13,514	\$ 17.40	\$ 101,357.21	\$ 130,116.79	\$ 28,769.58 LT
	Sold							
Total			37,500			\$ 606,788.03	\$ 845,701.03	\$ 138,915.00
Total realized gain or (loss) - this period						\$ 0.00	\$ 0.00	\$ 0.00
Total Long Term - Year-to-date								
Total Short Term - Year-to-date								
Total realized gain or (loss) - year-to-date						\$ 606,788.03	\$ 845,701.03	\$ 138,915.00

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Guide to CII Investment Research & Analysis (CIRA) Investment Ratings

Stock Ratings

Investment ratings are based upon CIRA's expectation of total return (forecast price appreciation plus dividend yield within the next 12 months) and risk rating.

Developed Markets (US, UK, Europe, Japan, and Australia/New Zealand)

<u>Code</u>	<u>Rating</u>	<u>Expected Total Return</u>
1	Buy	10% or more for Low-Risk stocks, 15% or more for Medium-Risk stocks, 20% or more for High-Risk stocks, and 35% or more for Speculative stocks
2	Hold	0-10% for Low-Risk stocks, 0-15% for Medium-Risk stocks, 0-20% for High-Risk stocks, and 0-35% for Speculative stocks
3	Sell	Negative total return

Stock Risk

Takes into account price volatility and a select list of fundamental criteria.

<u>Code</u>	<u>Rating</u>	<u>Definitions</u>
L	Low	High predictability of financial results and low volatility
M	Medium	Moderate predictability of financial results and volatility
H	High	Low predictability of financial results and high volatility
S	Speculative	Exceptionally low financial predictability, highest risk and volatility

Morgan Stanley Stock Ratings

Morgan Stanley's ratings system differs from the CIRA rating system. Morgan Stanley does not assign ratings of Buy, Hold or Sell to the stocks they cover. Their ratings, Overweight, Equal-weight, Not-Rated and Underweight, are not the equivalent of Buy, Hold and Sell, but represent recommended relative weightings. To satisfy regulatory requirements, Morgan Stanley corresponds Overweight, their most positive stock rating, with a Buy (1) recommendation, they correspond Equal-weight and Not-Rated to Hold (2) and Underweight to Sell (3) recommendations, respectively. These corresponding ratings are displayed on account statements. Morgan Stanley's own proprietary ratings, shown below, are displayed on Morgan Stanley research reports.

<u>Code</u>	<u>Rating</u>	<u>Definition</u>
O	Overweight	The stock's total return is expected to exceed the average total return of the analyst's industry (or industry team's) coverage universe, on a risk-adjusted basis, over the next 12-18 months.
E	Equal-weight	The stock's total return is expected to be in line with the average total return of the analyst's industry (or industry team's) coverage universe, on a risk-adjusted basis, over the next 12-18 months.
NR	Not-Rated	Currently the analyst does not have adequate conviction about the stock's total return relative to the average total return of the analyst's industry (or industry team's) coverage universe, on a risk-adjusted basis, over the next 12-18 months.
U	Underweight	The stock's total return is expected to be below the average total return of the analyst's industry (or industry team's) coverage universe, on a risk-adjusted basis, over the next 12-18 months.

*NAV, NA or ** appearing for Morgan Stanley Research indicates that the ratings for this company are not available because of a Morgan Stanley policy.*

Message: Consolidated Statement of Financial Condition. At June 30, 2010, Citigroup Global Markets Inc. had net capital of \$8.31 billion which exceeded the Securities and Exchange Commission's minimum requirement by \$7.56 billion. A copy of the Citigroup Global Markets Inc. Consolidated Statement of Financial Condition can be viewed online at: www.smithbarney.com/pdf/sfc2436.pdf or may be mailed to you at no cost by calling (877) 936-2737.

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Message: Important Information If you are a margin customer

If you have a margin account with us, as permitted by law we may use certain securities in your account for, among other things, settling short sales and lending the securities for short sales, and as a result may receive compensation in connection therewith.

*Information regarding commissions and charges will be made available to you promptly upon request. Please advise Morgan Stanley Smith Barney of any material change in your financial objectives or financial situation. All checks written and deposited to your account must be made payable to Citigroup Global Markets Inc. A financial statement of Citigroup Global Markets Inc. is available for your personal inspection at its offices, or a copy of it will be mailed upon your written request. If you believe there are any inaccuracies or discrepancies in your account, you must promptly contact **Citigroup Global Markets Inc. at 212-723-9903** and the Manager of the branch servicing your account (see page 1 of statement for address and phone number). To protect your rights, including any rights you may have under the Securities Investor Protection Act (SIPA), you should reconfirm all oral communication in writing to Morgan Stanley, Smith Barney, Attention: Early Dispute Resolution Group, 485 Lexington Avenue, 14th Floor, New York, NY 10017.*